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**In the  
Supreme Court of the United States**

OCTOBER TERM, 1973

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**No. 73-858**

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**ALFREDO GONZALEZ, individually and on behalf of all others  
similarly situated,**

*Appellant,*

**vs.**

**AUTOMATIC EMPLOYEES CREDIT UNION, et al.,**

*Appellees.*

---

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

## **APPENDIX**

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### **CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES**

**March 16, 1972**

Plaintiff's Complaint.

**April 10, 1972**

Motion of Defendant Secretary to Dismiss.

**April 10, 1972**

Motion of Defendant Automatic Employees to Strike.

**April 14, 1972**

Memorandum of Defendant Secretary in Support of Motion to Dismiss.

**April 17, 1972**

Memorandum of Defendant Automatic Employees in Support of Motion to Strike.

**April 19, 1972**

Motion of Plaintiff to Convene a Three Judge Court.

**May 17, 1972**

Memorandum of Plaintiff in Support of Motion to Convene a Three Judge Court and in opposition to Defendants' Motions to Dismiss.

**May 26, 1972**

Defendant Secretary's Reply Memorandum in support of Motion to Strike and Dismiss.

**May 26, 1972**

Defendant Automatic's Reply to Memorandum of Plaintiff.



*Relevant Docket Entries*

June 21, 1972

Supplemental Memorandum of Plaintiff in Opposition to Motions to Dismiss.

June 21, 1972

Motion of Plaintiff for Temporary Restraining Order.

June 23, 1972

Memorandum of Plaintiff in Support of Temporary Restraining Order.

June 23, 1972

Memorandum of Defendant Secretary in Opposition to Temporary Restraining Order.

June 23, 1972

Motion of Ford Motor Credit Company for Leave to Intervene as Amicus Curiae and to File a Brief.

June 23, 1972

Memorandum of Ford Motor Credit Company in Opposition to Temporary Restraining Order.

June 23, 1972

Reply Memorandum of Defendant Automatic Employees to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion to Dismiss.

June 27, 1972

Order granting leave to Ford Motor Credit Company to Intervene as Amicus Curiae and File Brief in Support thereof.

June 30, 1972

Memorandum of Plaintiff in Support of Plaintiff's Proposed Temporary Restraining Order.

*Relevant Docket Entries*

July 3, 1972

Suggestions of Defendant Lewis in Opposition to Entry of Temporary Restraining Order.

July 6, 1972

Motion of Amicus Ford Motor Credit Company in Opposition to Entry of Temporary Restraining Order.

July 7, 1972

Motion of Plaintiff to Proceed as a Class Action in Count II.

July 7, 1972

Motion of Illinois Bankers Association to Appear as Amicus Curiae.

July 7, 1972

Order granting Plaintiff's Motion to Convene a Three Judge Court.

July 7, 1972

Order granting leave to Illinois Bankers Association to Intervene as Amicus Curiae and to File Brief.

July 7, 1972

Order denying Plaintiff's Motion for Temporary Restraining Order and denying Plaintiff's Motion requiring Defendants to File Answer to Complaint.

July 7, 1972

Order taking Plaintiff's Motion to Proceed as a Class Action under advisement and setting briefing schedule.

July 14, 1972

Designation of Three Judge Court.

August 16, 1972

Reply Memorandum of Defendant Secretary to Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion to Dismiss.

*Relevant Docket Entries*

August 18, 1972

Memorandum of Plaintiff in Support of Motion to Proceed as a Class Action.

August 28, 1972

Memorandum of Defendant Secretary in Opposition to Plaintiff's Motion to Proceed as a Class Action.

September 15, 1972

Motion of Amici Curiae, Ford Motor Credit Company and Illinois Bankers Association to Take Discovery.

September 15, 1972

Order taking Motion of Amici Curiae under advisement.

September 28, 1972

Plaintiff's Amended Complaint adding additional parties Plaintiff and Defendant.

October 17, 1972

Motion of Plaintiff Banks for Temporary Restraining Order against Defendant Wood Acceptance Corp.

October 24, 1972

Motion of Defendant Wood for Summary Judgment.

November 14, 1972

Motion of Defendant Automatic Employees to permit Motion to Strike filed as to original complaint stand as Motion to Strike as to the Amended Complaint.

November 14, 1972

Order granting above Motion.

November 14, 1972

Motion of Plaintiff's to Proceed as a Plaintiffs and Defendants Class Action in Count I.

November 20, 1972

Answer of Defendant Mercantile National Bank.

*Relevant Docket Entries*

November 22, 1972

Memorandum of Illinois Bankers Association in Opposition to Plaintiff's Motion to Proceed as a Class Action With Respect to Count II.

December 4, 1972

Memorandum of Defendant Wood Acceptance in Support of Motion for Summary Judgment.

December 5, 1972

Memorandum of Plaintiff's in Support of Motion to Proceed as a Plaintiffs and Defendants Class Action in Count I.

December 15, 1972

Motion of Defendant Secretary for Summary Judgment.

January 2, 1973

Joint Memorandum of all Creditor Defendants in Opposition to Motion to Proceed as a Plaintiffs and Defendants Class Action in Count I.

January 2, 1973

Memorandum of Illinois Bankers Association in Opposition to Plaintiff's Motion to Proceed as a Class Action in Count I.

January 9, 1973

Memorandum of Defendant Secretary in Support of Amended Motion to Dismiss or in the Alternative Motion for Summary Judgment.

January 26, 1973

Memorandum of Plaintiff in Opposition to Defendant Secretary's Motion for Summary Judgment.

*Relevant Docket Entries*

January 26, 1973

Reply Memorandum of Plaintiff in Support of Motion for Count I to Proceed as a Class Action and in Opposition to Defendant Wood Acceptance's Motion for Summary Judgment.

January 26, 1973

Reply Memorandum of Wood Acceptance to Plaintiff Bank's Memorandum in Opposition to Wood's Motion for Summary Judgment.

March 1, 1973

Stipulation to Dismiss Counts III and VI.

March 1, 1973

Supplemental Memorandum of All Defendants in Opposition to Motion to Proceed as a Class Action in Count I.

March 8, 1973

Reply Brief of Defendant Secretary in Support of Motion to Dismiss or in Alternative for Summary Judgment.

August 16, 1973

Order of Three Judge Court pursuant to Memorandum opinion dismissing the Amended Complaint.

October 4, 1973

Notice of Appeal to the Supreme Court of the United States.

December 28, 1973

Stipulation between Plaintiff Gonzalez and Defendant Mercantile National Bank Re: monetary damages in Count IV.

*Complaint*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

---

HERMOGENES MOJICA, individually and on behalf of  
all others similarly situated

Plaintiff

vs.

AUTOMATIC EMPLOYERS CREDIT UNION, an Illi-  
nois Corporation, and JOHN W. LEWIS, Secretary of  
State

Defendants

---

No. 72 C 686

**COMPLAINT**

(Filed March 16, 1972)

Now comes the plaintiff, Hermogenes Mojica, by his attorneys James O. Lattuner and Michael Fitch, and complains against the defendants as follows:

**COUNT I**

1. Plaintiff seeks to have this Court declare that Illinois Revised Statutes, Ch. 26 §§ 9-503 and 9-504 are invalid and unconstitutional insofar as these sections permit and authorize the repossession and subsequent sale of a debtor's property upon the alleged default of a security agreement without any prior notice or opportunity to be heard and to temporarily, preliminarily and permanently enjoin the defendant Credit Union from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive such alleged debtors of the due process and equal

*Complaint*

protection of the laws guaranteed by the Fifth and Fourteenth Amendments and constitutes an unreasonable seizure prohibited by the Fourth Amendment to the Constitution of the United States.

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1343 (3) and (4) and Title 42 U.S.C. Sec. 1983. This cause of action is also properly within the ancillary jurisdiction of this Court.

3. Plaintiff, Hermogenes Mojica is a citizen of the United States and a resident of Chicago, Illinois.

4. The defendant Automatic Employees Credit Union, is an Illinois Corporation engaged in the business of making loans and consumer financing under secured transactions with its principal place of business in Northlake, Illinois.

5. On December 1, 1971, plaintiff purchased a used 1970 Chevrolet for \$3,464.00, excluding insurance.

6. On or slightly before December 1, 1971, plaintiff borrowed \$3,100.00 from the defendant Credit Union and gave said defendant a security interest in said 1970 Chevrolet, pursuant to a security agreement.

7. Under the terms of the loan and security agreement, plaintiff was to pay the defendant Credit Union \$30.00 per week until the loan plus interest was paid.

8. Beginning December 3, 1971, plaintiff paid defendant Credit Union \$30.00 each and every week to and including March 3, 1972.

9. The plaintiff had not missed nor been late on making any weekly payments and the last payment was made on March 3, 1972.

*Complaint*

10. The automobile was repossessed by the defendant Credit Union on March 6, 1972, pursuant to Ill. Rev. Stats. Ch. 26 Sec. 9-503, which provides in part:

“Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. . . .”

11. The defendant is authorized pursuant to Ill. Rev. Stats. Ch. 26 Sec. 9-504, to sell plaintiff's automobile. Said statute provides in part as follows:

“(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. . . .”

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value of all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this party or of any judicial proceedings.

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith. . . .”

12. At all times relevant herein the defendant was acting under color of the laws of the State of Illinois and injuring plaintiff and depriving plaintiff of the rights, privileges and immunities secured to the plaintiff by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.



*Complaint*

13. Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are contrary to and violate the Constitution of the United States in that:

(a) said statutes establish and authorize a procedure which permits the taking of property without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States;

(b) the effect of said statutes is that secured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus, these statutes deny debtors the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States; and

(c) the action of the defendant constitutes an unreasonable seizure of plaintiff's property as prohibited by the Fourth Amendment of the Constitution of the United States.

14. Unless relief is granted, plaintiff will suffer irreparable harm.

Wherefore, plaintiff respectfully prays that this Honorable Court.

1. Declare that Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

2. Enter temporary, preliminary and permanent injunctions enjoining defendant, its agent, employees, and

*Complaint*

assignees, and all other persons in active concert and participation with it from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive the plaintiff of the rights guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

3. Grant plaintiff his costs in this action and such other and further relief as the Court shall deem just.

## COUNT II

1. Plaintiff, Hermogenes Mojica, individually and on behalf of all others similarly situated seeks to have this Court declare invalid and enjoin the enforcement of Ill. Rev. Stat. Ch. 95½, Sec. 3-114 (b), 3-116 (b) and 3-612 insofar as these statutes of state wide application permit, authorize and compel the Secretary of State to transfer title and issue a new certificate of title to a transferee after an involuntary repossession and to issue special repossessor plates to those in the business of repossessing automobiles. Said statutes deprive debtors allegedly in default of the due process and equal protection of the law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. Jurisdiction is based upon Title 28, U.S.C. Sec. 1331, 1343 (3) and (4). Jurisdiction is further conferred on this Court by Title 28, U.S.C. Sec. 2201, 2202, 2281, 2284, and 42 U.S.C. Sec. 1983.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. Sec. 2281 and 2284 since plaintiff seeks an injunction to restrain defendant, Secretary of State, from the enforcement, operation and execution of statutes of statewide applicability, on the ground that said statutes are contrary to the Fifth and

*Complaint*

Fourteenth Amendments to the Constitution of the United States.

4. The named plaintiff, Hermogenes Mojica is a citizen of the United States and a resident of Chicago, Illinois.

5. The plaintiff brings this class action on his own behalf, and on behalf of all other persons similarly situated pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure. The class is composed of all persons who have had their automobiles or other motor vehicles repossessed for an alleged default, without prior notice, or an opportunity to be heard. This class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; and the representative party will thoroughly and adequately protect the interests of the class. In addition, the defendant Secretary and his agents acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

6. Defendant John W. Lewis, is the duly appointed Secretary of State and is charged with state-wide administration of the Illinois Vehicle Code, specifically including transfer of title and registration of motor vehicles.

7-17. Plaintiff incorporates and realleges paragraphs 4 through 13 as paragraphs 7 through 17 of this Count II.

18. Ill. Rev. Stats. Ch. 95 $\frac{1}{2}$  Sec. 3-114 (b) and 3-116 (b) authorize and compel the defendant Secretary to transfer title and issue a new certificate to a transferee after an involuntary repossession. Said statutes provide:

3-114 Transfer by operation of law:

### *Complaint*

(b) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a lienholder named in the certificate of title, the transferee shall promptly mail or deliver within fifteen (15) days to the Secretary of State the last certificate of title, his application for a new certificate in the form the Secretary of state prescribes, and an affidavit made by or on behalf of the lienholder that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement. If the lienholder succeeds to the interest of the owner and holds the vehicle for resale, he must secure a new certificate of title and upon transfer to another person, shall deliver to the transferee the properly assigned certificate.

§ 3-116 When Secretary of State to issue a new certificate

(b) The Secretary of State, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to him, Secretary of State shall make demand therefor from the holder thereof.

19. Ill. Rev. Stats., Ch. 95½ Sec. 3-612 authorizes the defendant Secretary to issue special reposessor plates to those in the business of repossessing automobiles under the Illinois Commercial Code. Said Statute provides:

§ 3-612 Reposessor Plates

The Secretary, upon receipt of an application, made on the form prescribed by the Secretary of State may issue to financial institutions, to lending institutions and to persons engaged in the business of repossessing motor vehicles for others in situations where the motor vehicle is the security for the funds, special plates which may be used by such financial institu-

*Complaint*

tions, lending institutions and reposseors solely for the purpose of operating the motor vehicles which are repossessed by such reposseors upon a default in the contract. . . .

20. Ill. Rev. Stats. Ch. 95½ Sec. 3-114 (b), 3-116 (b) and §3-612 are contrary to and violate the Constitution of the United States in that:

(a) said statutes establish and authorize a procedure which permits the taking of property without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

(b) the effect of said statutes is that secured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus these statutes deny debtor's the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

21. Unless relief is granted, plaintiff will suffer irreparable harm.

Wherefore, plaintiff respectfully prays, on behalf of himself and all others similarly situated, that this Honorable Court:

1. Convene a three-judge District Court pursuant to 28 U.S.C. Sec. 2281 and 2284 to hear and determine this controversy.

2. Determine by order, pursuant to Rule 23 (c) (1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

### *Complaint*

3. Declare that Ill. Rev. Stat. Ch. 26, Sec. 9-503 and 9-504 and Ch. 95½ Sec. 3-114 (b) 3-116 (b) and 3-612 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

4. Enter preliminary and permanent injunctions, enjoining defendant, Secretary, his successors in office, agents and employees, and all other persons in active concert and participation with him from transferring title and issuing a new certificate of title to a transferee after an involuntary repossession and from issuing special repossession plates to those in the business of repossessing motor vehicles pursuant to the authority of these statutes on the grounds that said procedures deprive the plaintiff of the rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

5. Pursuant to Rule 54 (d) of the Federal Rules of Civil Procedure, allow plaintiffs their costs herein, and also grant them and all persons similarly situated such additional or alternative relief as may seem to this Court to be just, proper and equitable.

•   •   •

James O. Lattuner  
1105 E. 63rd Street  
Chicago, Illinois 60637  
955-6300

/s/ *James O. Lattuner*  
James O. Lattuner

Michael Fitch  
2029 W. North Avenue  
Chicago, Illinois 60647  
489-6800

/s/ *Michael Fitch*  
Michael Fitch  
Attorneys for Plaintiff

*Motion for Temporary Restraining Order*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**MOTION FOR TEMPORARY RESTRAINING ORDER**  
(Filed June 21, 1972)

Now comes the plaintiff, Hermogenes Mojica by his attorney, James O. Latturmer and respectfully moves this court to enter a temporary restraining order, restraining the defendant John W. Lewis, Secretary of State, his successors, agents and employees, pending the final hearing and determination of this cause, from transferring title and issuing a new certificate of title to a transferee after an involuntary repossession of an automobile until such time as the owner debtor has been given a hearing before an impartial and neutral trier of fact as to the right of the creditor to repossess and sell the automobile and of the Secretary of State to transfer title and issue a new certificate of title for the following reasons:

1. The grounds of this Motion as more fully set forth in plaintiff's verified complaint are:

(a) The probability of plaintiff prevailing upon final hearing of this cause is great in light of *Fuentes v. Shevin*, \_\_\_\_\_ U.S. \_\_\_\_\_ (June 12, 1972).

(b) Plaintiff class will suffer immediate and irreparable injury, and loss of property.

(c) The issuance of a temporary restraining order will not cause undue inconvenience or loss to the defendant, but will prevent irreparable injury to the plaintiffs.

(d) The Statutes in question are in violation of the rights, privileges and immunities secured to plaintiff by

*Affidavit*

the Fourteenth Amendment to the United States Constitution.

(e) Plaintiffs have no adequate remedy at law.

2. The affidavit of Hermogenes Mojica in support of this motion is attached hereto.

3. Said irreparable injury to plaintiff class will continue day after day unless the defendant Secretary is restrained from committing the above described acts which injure the plaintiffs until a three judge court can be convened to hear plaintiff's motion for a preliminary injunction.

/s/ *James O. Lattuner*

Attorney for Plaintiff

**AFFIDAVIT**

Hermogenes Mojica, being first duly sworn deposes and says:

1. I am the plaintiff in the above captioned case, have knowledge of the facts contained herein and could testify competently thereto if called as a witness in court.

2. On March 6, 1972 my automobile was repossessed by Automatic Employees Credit Union.

3. At the time of repossession I had not missed nor been late in making any of my weekly payments and my last payment had been made on March 3, 1972.

4. I was not given any notice or hearing or opportunity for a hearing prior to the repossession by the Credit Union and transfer of my title by the Secretary of State.

5. If I had been given a due process hearing, the probability of my prevailing would have been great.



*Suggestions in Opposition to Entry of Temporary  
Restraining Order*

6. Just prior to the repossession I had been laid off my job at Automatic Electric Company in Northlake, Illinois.

7. Shortly after the repossession, I was notified by Automatic Electric that there was a job available on the work shift that begins at midnight.

8. At that time I resided at 1235 N. Damen, Chicago, Illinois.

9. There is no public transportation from my residence area to Automatic Electric in Northlake, Illinois, at said time of night.

10. As a result of the repossession of my automobile, I was unable to accept the job at Automatic Electric.

11. I have been unable to find another job and I am still unemployed.

/s/ *Hermogenes Mojica*  
Hermogenes Mojica

(Jurat and Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**SUGGESTIONS IN OPPOSITION TO ENTRY OF  
TEMPORARY RESTRAINING ORDER**

(Filed July 3, 1972)

Defendant, John W. Lewis, Secretary of State, by his attorney William J. Scott, Attorney General of the State of Illinois, files this his Suggestions in Opposition to Entry of Temporary Restraining Order:

*Suggestions in Opposition to Entry of Temporary  
Restraining Order*

1. The entry of an order restricting the Secretary of State in issuance of repossession titles will have a substantial impact upon creditor institutions engaged in auto financing. However, this Defendant is not a representative of the special interests of that class of creditors, and will restrict his comments solely to concerns of the Office of Secretary of State.

2. The Secretary of State is charged with the responsibility of administering the Illinois Vehicle Code, including the provisions of Chap. 95½, §3-114 Ill. Rev. Stats. This Defendant is therefore concerned with satisfying the express requirements of the statute, and defending the validity of State law.

3. For the reasons heretofore presented to the Court, this Defendant challenges the jurisdiction of the Court to hear and decide the issue presented, or to issue a Temporary Restraining Order directed to this Defendant.

4. However, it is proposed that the Secretary of State, in lieu of the entry of any Temporary Restraining Order and to avoid the obligation to appeal such an order, will without delay adopt and promulgate new rules and regulations governing procedures for the transfer of title by operation of law under §3-114 of the Illinois Vehicle Code, which shall provide:

A. The application for a new certificate shall also include an affidavit made by or on behalf of the lienholder that (1) the debtor-owner was mailed notice of the potential application to transfer title by certified mail, return receipt requested, at least 15 days prior to the application, and informed of his right to file an affidavit of defense with the lienholder contesting that his interest was lawfully terminated or sold pursuant to the terms of the

*Suggestions in Opposition to Entry of Temporary  
Restraining Order*

security agreement; and (2) the lienholder has not received an affidavit of defense.

B. The application for a new certificate shall be returned by the Secretary of State without action (1) if the required affidavit is not supplied, or (2) if an affidavit of defense has been received by the lienholder, unless the application also contains a certified copy of an order by any court of competent jurisdiction, except a judgment by confession, declaring the creditor is entitled to possession and title of the automobile.

5. Adoption of these rules and regulations in lieu of the entry of any Temporary Restraining Order will accomplish the same equitable result desired, but not generate an unnecessary conflict between branches of government.

Respectfully submitted,

/s/ William J. Scott  
William J. Scott  
Attorney General of Illinois  
160 North LaSalle Street  
Chicago, Illinois 60601

Herbert L. Caplan  
Assistant Attorney General  
(Of Counsel)

793-2528

(Certificate of Service omitted in printing)

*Transcript of Proceedings*

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF ILLINOIS  
 EASTERN DIVISION

[Caption Omitted in Printing]

**TRANSCRIPT OF PROCEEDINGS**

had in the above-entitled cause before the Honorable Richard B. Austin, one of the Judges of said Court in his courtroom in the United States Courthouse, Chicago, Illinois, on Friday, July 7, 1972 at 11:00 o'clock a.m.

. . .

9 The Court: And in regard to this promulgation of a regulation, or whatever you are going to call it—

Mr. Kaplan: Excuse me, could I clarify that? Perhaps I inadvertently used the wrong language.

I am informed by Mr. Collins, legal advisor to the Secretary of State's Office, that presently they have not actually had promulgated rules in the sense of conducting hearings and filing a rule with the Secretary of State in accordance with the rule-making procedures. They do have office policy which presently governs the form of application and affidavit that they use.

What I should have said was that that office policy, which now governs the form, would be altered, and all creditors would be informed of the change in policy, so that there would not be a formally promulgated rule in the sense of a rule-making procedure, but there would be the same rule that governs the present processing of applications.

The Court: What would you call it, a regulation, a rule, or just a piece of paper, or what?

10 Mr. Kaplan: Your Honor, this is Mr. Collins.

Mr. Collins: Just an administrative policy, your Honor.

. . .

*Motion to Proceed as a Class Action*IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**MOTION TO PROCEED AS A CLASS ACTION**

(Filed July 7, 1972)

Now comes the plaintiff, Hermogenes Mojica, by his attorney, James O. Lattuner, pursuant to Rule 23 (c)(1) of the Federal Rules of Civil Procedure and respectfully moves this Court to determine that Count II may properly proceed as a class action pursuant to Rule 23 (a) and (b) because the class, consisting of all persons who have had or will have their automobiles or other motor vehicle repossessed for an alleged default without prior notice or an opportunity to be heard and whose certificate of title will be terminated and transferred by the Secretary of State, is so numerous that joinder of all members is impractical; there are no questions of law and fact common to the class; the claims of the representative party will thoroughly and adequately protect the interests of the class. In addition, the defendant Secretary and his agents have acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

/s/ *James O. Lattuner*  
Attorney for Plaintiff

(Certificate of Service omitted in printing)

*Amended Complaint***ORDER****UNITED STATES DISTRICT COURT, NORTHERN  
DISTRICT OF ILLINOIS, EASTERN DIVISION**

Name of Presiding Judge, Honorable Richard B. Austin  
Cause No. 72 C 686 Date July 7, 1972

Title of Cause—Mojica v. Automatic Employees Credit  
Union et al

Plaintiff's motion to convene a three-judge court pursuant to 28 U.S.C. Sections 2281 and 2284 is granted.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

---

Hermogenes Mojica, Alberto Gonzalez, James Barnett  
and Compton C. Banks, individually and on behalf of all  
others similarly situated,

*Plaintiffs,*

vs.

Automatic Employees Credit Union, Mercantile National  
Bank Of Chicago, Car Credit Corp., Overland Bond &  
Investment Corp. and Wood Acceptance Corp., individually  
and as representatives of all others similarly situated,  
and John W. Lewis, Secretary of State,

*Defendants.*

---

NO. 72 C 686

**AMENDED COMPLAINT**

(Filed September 28, 1972)

Now come the plaintiffs, Hermogenes Mojica and  
Alberto Gonzalez, by their attorneys, James O. Lattuner

*Amended Complaint*

and Allen R. Kamp, and the plaintiffs, James Barnett and Compton C. Banks, by their attorney, William J. McNally, and complain against the defendants as follows:

## COUNT I

1. Plaintiffs seek to have this Court declare that Illinois Revised Statutes, Ch. 26 §§9-503 and 9-504 are invalid and unconstitutional insofar as these sections permit and authorize the repossession and subsequent sale of a debtor's property upon the alleged default of a security agreement without any prior notice or opportunity to be heard and to temporarily, preliminarily and permanently enjoin the defendants and the defendant class from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive such alleged debtors of the due process and equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments and constitute an unreasonable seizure prohibited by the Fourth Amendment to the Constitution of the United States.

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1343(3) and (4) and Title 42 U.S.C. Sec. 1983. This cause of action is also properly within the ancillary jurisdiction of this Court.

3. The plaintiffs bring this class action on their own behalf, and on behalf of all other persons similarly situated pursuant to Rules 23(b)(1)(A) and 23(b)(2) of the Federal Rules of Civil Procedure. The class is composed of all persons who are debtors under security agreements involving motor vehicles and who have had or may have their automobiles or other motor vehicles repossessed for an alleged default, without prior notice or an opportunity to be heard. This class is so numerous that joinder of all

*Amended Complaint*

members is impracticable; there are questions of law or fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; and the parties opposing the class have acted or referred to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

4. Defendants Automatic Employees Credit Union, Mercantile National Bank of Chicago, Wood Acceptance Company and Overland Bond & Investment Corp. are sued individually and as representatives of all other similarly situated, pursuant to Rule 23(b)(1)(A) of the Federal Rules of Civil Procedure. The class is composed of all persons who are secured parties within the meaning of Ill. Rev. Stats. ch. 26, §9-105(i) and who may, upon their unilateral determination of default by debtor-obligees, seek to recover possession and dispose of the collateral governed by such security agreements pursuant to and under color of Illinois Revised Statutes ch. 26, §9-503 and 4. Said class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class; the defenses of the representative parties are typical of the defenses of the class, and the representative parties will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions against the class would create a



*Amended Complaint*

risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

•   •   •

ALLEGATIONS PERTAINING TO PLAINTIFF  
GONZALEZ

13. Plaintiff, Alfredo Gonzalez, is a citizen of the United States and a resident of Chicago, Illinois.

14. Defendant, Mercantile National Bank of Chicago, is engaged in the business of making loans and consumer financing under secured transactions with its principal place of business in Chicago, Illinois.

15. On January 22, 1972, Gonzalez purchased a used 1968 Pontiac from Chicago, Illinois Motor Sales, Inc. pursuant to a retail installment contract. A copy of the retail installment contract and the bill of sale are attached hereto as Exhibits "C" and "D" respectively.

16. The retail installment contract was made on a form supplied and prepared by Mercantile. Chicago, Illinois Motor Sales, Inc. had authority to extend credit to Gonzalez on behalf of Mercantile and assigned the contract to Mercantile on or shortly after January 22, 1972.

17. The amount financed pursuant to the retail installment contract also included physical damage and collision insurance, which was required by the contract as a condition of financing. Said insurance was purchased by Mercantile and was for the benefit of the holder of the contract, Mercantile.

18. The contract provided for Gonzalez to pay fifteen installments of One Hundred Twenty Dollars and Sev-

*Amended Complaint*

enty-Eight Cents (\$120.78) each beginning on February 28, 1972 and on the same day of each successive month until paid.

19. Gonzalez paid the February 28, 1972 installment.

20. On March 26, 1972 and April 16, 1972, Gonzalez was involved in accidents covered by the insurance required by the contract. The amount of the claim payable to Mercantile as a result of these accidents was Three Hundred Twenty-Two Dollars and Sixty-Eight Cents (\$322.68).

21. On April 18, 1972 the insurance referred to in Paragraph 17 above was cancelled by the insurance company. Pursuant to this cancellation Mercantile received a Two Hundred Twenty-Nine Dollars and Ninety-Four Cents (\$229.94) rebate. Said rebate was paid directly to Mercantile by the insurance company.

22. On or about April 25, 1972 said automobile was repossessed by Mercantile pursuant to and under color of Illinois Revised Statutes, Ch. 26, Sec. 9-503, without the knowledge or consent of Gonzalez.

23. At the time of repossession, Mercantile had received an amount in excess of the payments then due and owing on the contract.

. . .

ALLEGATIONS PERTAINING TO ALL  
PLAINTIFFS

49. Illinois Revised Statutes, Ch. 26, §9-503, pursuant to which plaintiffs' automobiles have been or may be repossessed, provides in part:

"Unless otherwise agreed a secured party has on default the right to take possession of the collateral.

### *Amended Complaint*

In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. . . ."

50. Subsequent to repossession, plaintiffs' automobiles have been or may be sold pursuant to Ill. Rev. Stats. Ch. 26 §9-504, which provides in part as follows:

"(1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation of processing. . . ."

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this party or of any judicial proceedings.

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith. . . ."

51. At all times relevant herein the defendants were acting under color of the laws of the State of Illinois and injuring plaintiffs and depriving plaintiffs of the rights, privileges and immunities secured to the plaintiffs by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

52. Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are contrary to and violate the Constitution of the United States in that:

*Amended Complaint*

(a) said statutes establish and authorize a procedure which permits the taking of property without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States;

(b) the effect of said statutes is that secured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus, these statutes deny debtors the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States; and

(c) the actions of the defendants constitute an unreasonable seizure of plaintiff's property as prohibited by the Fourth Amendment of the Constitution of the United States.

53. Plaintiffs have no adequate remedy at law and unless relief is granted, plaintiffs will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action as to both the plaintiff class and defendant class.

2. Declare that Ill. Rev. Stats. Ch. 26 Sec. 9-503 and 9-504 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth,

*Amended Complaint*

Fifth and Fourteenth Amendments to the United States Constitution.

3. Enter temporary, preliminary and permanent injunctions enjoining the defendants, and each person in the class of defendants here represented, and their agents, employees and assignees, and all other persons in active concert and participation with them from repossessing or selling articles pursuant to the authority of these sections on the grounds that these procedures deprive the plaintiffs of the rights guaranteed by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

4. Grant plaintiffs their costs in this action and such other and further relief as the Court shall deem just.

**COUNT II**

1. Plaintiffs individually and on behalf of all others similarly situated seek to have this Court declare invalid and enjoin the enforcement of Ill. Rev. Stat. Ch. 95½, Sec. 3-114(b), 3-116(b) and 3-612 insofar as these statutes of state wide application permit, authorize and compel the Secretary of State to transfer title and issue a new certificate of title to a transferee after an involuntary repossession and to issue special reposessor plates to those in the business of repossessing automobiles. Said statutes deprive debtors allegedly in default of the due process and equal protection of the law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

2. Jurisdiction is based upon Title 28, U.S.C. Sec. 1331, 1343(3) and (4). Jurisdiction is further conferred

*Amended Complaint*

on this Court by Title 28, U.S.C. Sec. 2201, 2202, 2281, 2284 and 42 U.S.C. Sec. 1983.

3. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. Sec. 2281 and 2284 since plaintiffs seek an injunction to restrain defendant, Secretary of State, from the enforcement, operation and execution of statutes to statewide applicability, on the ground that said statutes are contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States.

4. The plaintiffs bring this class action on their own behalf, and on behalf of all other persons similarly situated pursuant to Rules 23 (b)(1)(A) and 23 (b)(2) of the Federal Rules of Civil Procedure. The class is composed of all persons who are debtors under security agreements invoking motor vehicles and who have had or may have their automobiles or other motor vehicles repossessed and sold for an alleged default without prior notice and an opportunity to be heard and whose certificate of title has been or will be terminated and transferred by the Secretary of State. This class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; and the representative parties will fairly and adequately protect the interests of the class. In addition, the defendant Secretary and his agents have acted and refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole; and the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would

*Amended Complaint*

establish incompatible standards of conduct for the party opposing the class.

5. Defendant John W. Lewis, is the duly appointed Secretary of State and is charged with state-wide administration of the Illinois Vehicle Code, specifically including transfer of title and registration of motor vehicles.

6-54. Plaintiff incorporates and realleges paragraphs 5 through 53 of Count I as paragraphs 6 through 54 of this Count II.

55. Ill. Rev. Stats. Ch. 95½ Sec. 3-114(b) and 3-116(b) authorize and compel the defendant Secretary to transfer title and issue a new certificate to a transferee after an involuntary repossession. Said statutes provide:

**3-114 Transfer by operation of law:**

(b) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a lienholder named in the certificate of title, the transferee shall promptly mail or deliver within fifteen (15) days to the Secretary of State the last certificate of title, his application for a new certificate in the form the Secretary of State prescribes, and an affidavit made by or on behalf of the lienholder that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement. If the lienholder succeeds to the interest of the owner and holds the vehicle for resale, he must secure a new certificate of title and upon transfer to another person, shall deliver to the transferee the properly assigned certificate.

**3-116 When Secretary of State to issue a new certificate**

(b) The Secretary of State, upon receipt of an application for a new certificate of title by a transferee other than by voluntary transfer, with proof of the transfer, the required fee and any other documents

### *Amended Complaint*

required by law, shall issue a new certificate of title in the name of the transferee as owner. If the outstanding certificate of title is not delivered to him, Secretary of State shall make demand therefor from the holder thereof.

56. Ill. Rev. Stats., Ch. 95½ Sec. 3-612 authorizes the defendant Secretary to issue special reposessor plates to those in the business of repossessing automobiles under the Illinois Commercial Code. Said Statute provides:

#### 3-162 Repossessor Plates

The Secretary, upon receipt of an application, made on the form prescribed by the Secretary of State may issue to financial institutions, to lending institutions and to persons engaged in the business of repossessing motor vehicles for others in situations where the motor vehicle is the security for the funds, special plates which may be used by such financial institutions, lending institutions and repossessors solely for the purpose of operating the motor vehicles which are repossessed by such repossessors upon a default in the contract. . .

57. Ill. Rev. Stats. Ch. 95½ Sec. 3-114(b), 3-116(b) and 3-612 and defendant Secretary's enforcement of them are contrary to and violate the Constitution of the United States in that:

(a) said statutes establish and authorize a procedure which permits the taking of properties without prior notice and an opportunity to be heard in violation of due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States.

(b) the effect of said statutes is that accured creditors need not resort to the State Court system to compel performance, but may instead resort to a concept of self-help. Debtors under the same contracts on the



*Amended Complaint*

other hand, are required to resort to the judicial process to compel performance of the same contract or recover damages for breach thereof. Thus these statutes deny debtor's the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Wherefore, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Honorable Court:

1. Convene a three-judge District Court pursuant to 28 U.S.C. Sec. 2281 and 2284 to hear and determine this controversy.

2. Determine by order, pursuant to Rule 23(c) (1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Declare that Ill. Rev. Stats. Ch. 26, Sec. 9-503 and 9-504 and Ch. 95½ Sec. 3-114(b), 3-116(b) and 3-612 are invalid and unconstitutional on their face and as applied for the reasons that they violate the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

4. Enter preliminary and permanent injunctions, enjoining defendant, Secretary, his successors in office, agents and employees, and all other persons in active concert and participation with him from transferring title and issuing a new certificate of title to a transferee after an involuntary repossession and from issuing special repossession plates to those in the business of repossessing motor vehicles pursuant to the authority of these statutes on the grounds that said procedures deprive the plaintiff of the rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

*Amended Complaint*

5. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiffs their costs herein, and also grant them and all persons similarly situated such additional or alternative relief as may seem to this Court to be just, proper and equitable.

\* \* \*

## COUNT IV

1. Plaintiff Gonzalez seeks in this Count to recover damages for injuries sustained and to redress the deprivation, under color of State law, of rights secured to him by the Constitution of the United States.

2. The jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1331 and 1343(3) and (4) and Title 42 U.S.C. Sec. 1983. The matter in controversy exceeds, exclusive of interests and costs, the sum of Ten Thousand Dollars (\$10,000.00). This cause of action is also properly within the ancillary jurisdiction of this Court.

3-17. Plaintiff incorporates by reference and realleges paragraphs 13-23 and 49-52 of Count I as paragraphs 3-17 of this Count.

18. As a direct and proximate result of defendant Mercantile repossessing plaintiff's personal property in the wrongful manner described above, plaintiff has been damaged by defendant Mercantile in the sum of Fifteen Hundred Dollars (\$1,500.00) which is the fair market replacement value of said property.

19. In addition, plaintiff has lost the use of his automobile and as a direct result thereof has suffered great mental and emotional anguish and has suffered the loss

*Amended Complaint*

of the use of his property and has been deprived of the rights secured to him under the Constitution of the United States by the defendant Mercantile, who acted with knowledge of the wrongfulness of its acts and with malice.

Wherefore, plaintiff Gonzalez respectfully prays:

1. For judgment in favor and against the defendant Mercantile Union in the sum of Twelve Thousand Dollars (\$12,000.00) actual damages and Fifty Thousand Dollars (\$50,000.00) punitive damages;

2. Grant plaintiff his costs in this action and such other and further relief as the Court shall deem just.

\* \* \*

/s/ *James O. Lattuner*

/s/ *William J. McNally*

*Attorneys for Plaintiffs*

JAMES O. LATTURNER

ALLEN R. KAMP

4564 N. Broadway

Chicago, Illinois 60640

769-1015

WILLIAM J. McNALLY

53 W. Jackson

Chicago, Illinois 60604

939-5797

(Certificate of Service omitted in printing)

*Motion to Proceed as a Class Action*IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**MOTION TO PROCEED AS A PLAINTIFFS AND  
DEFENDANTS CLASS ACTION IN COUNT I**

(Filed November 14, 1972)

Now come the plaintiffs by their attorneys, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure and respectfully move this Court to determine:

1. That Count I may properly proceed as a class action as to the plaintiffs pursuant to Rule 23(a) and (b) because the class, consisting of all persons who are debtors under security agreements involving motor vehicles and who have had or may have their automobiles or other motor vehicles repossessed for an alleged default without prior notice or an opportunity to be heard, is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class and the representative parties will fairly and adequately protect the interests of the class. In addition, the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; and the parties opposing the class have acted or referred to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

*Motion to Proceed as a Class Action*

2. That Count I may properly proceed as a class action as to the defendants pursuant to Rule 23(a) and (b) because the class, consisting of all persons who are secured parties within the meaning of Ill. Rev. States. Ch. 26, §9-105(i) and who may, upon their unilateral determination of default by debtor-obligees, seek to recover possession and dispose of the collateral governed by such security agreements pursuant to and under color of Illinois Revised Statutes Ch. 26, §9-503 and 4, is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class and the representative parties will fairly and adequately protect the interests of the class.

In addition, the prosecution of separate actions against the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class.

/s/ *James O. Lattuner*  
*One of the Attorneys for*  
*Plaintiffs*

(Certificate of Service omitted in printing)

*Answer to Amended Complaint*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**ANSWER OF DEFENDANT MERCANTILE  
NATIONAL BANK OF CHICAGO TO  
AMENDED COMPLAINT**

(Filed November 20, 1972)

Mercantile National Bank of Chicago ("Mercantile"), defendant herein, by its attorneys, Paul E. Flaherty, Donald J. Parker, Albert E. Jenner, Jr., William B. Davenport and Peter A. Flynn, answers the amended complaint as to plaintiff Alfredo Gonzalez as follows:

COUNT I

1. Mercantile admits that plaintiff Gonzalez seeks to have this Court declare Sections 9-503 and 9-504 of the Uniform Commercial Code, Ill. Rev. Stats. ch. 26, §§9-503 and 9-504 unconstitutional. Mercantile denies that said statutes, or either of them, are unconstitutional on any of the grounds asserted by plaintiff Gonzalez. Mercantile asserts that even if said statutes, or either of them, is unconstitutional, plaintiff Gonzalez has no standing to seek injunctive relief of any kind by reason of matters hereinafter stated.

2. Mercantile admits that plaintiff Gonzalez purports to invoke the jurisdiction of this Court under Title 28 U.S.C. Section 1343(3) and (4), and Title 42 U.S.C. Section 1983. Mercantile denies that plaintiff's purported cause of action is also properly within the ancillary jurisdiction of this Court.

3. Mercantile admits that plaintiff Gonzalez purports to bring this class action on his own behalf and on behalf

*Answer to Amended Complaint*

of all other persons similarly situated under the stated portion of Rule 23 of the Federal Rules of Civil Procedure. Mercantile denies each and every other allegation of paragraph 3.

4. Mercantile admits that plaintiff Gonzalez purports to sue Mercantile individually and as a representative of all others similarly situated pursuant to the stated portion of Rule 23 of the Federal Rules of Civil Procedure. Mercantile denies each and every other allegation of paragraph 4.

5-12. Mercantile makes no answer to these paragraphs, since these paragraphs do not refer to Mercantile.

13. Mercantile is without information concerning the citizenship and residence of plaintiff Gonzalez and accordingly denies the allegations of paragraph 13.

14. Mercantile admits that it is engaged in the business, among other things, of making loans and financing consumer transactions, with its principal place of business in Chicago, Illinois.

15. Mercantile admits the allegations of paragraph 15.

16. Mercantile admits the allegation of the first sentence of paragraph 16 that the retail installment contract was made on a form supplied by Mercantile but denies the allegation thereof that the retail installment contract was prepared by Mercantile. Mercantile denies the allegation of the second sentence of paragraph 16 that Chicago, Illinois Motor Sales, Inc. had authority to extend credit to plaintiff Gonzalez on behalf of Mercantile but admits the allegation thereof that Chicago, Illinois Motor Sales, Inc. assigned the contract to Mercantile shortly after January 22, 1972.

17. Mercantile admits the allegations of the first sentence of paragraph 17. Mercantile admits the allegation

*Answer to Amended Complaint*

of the second sentence of paragraph 17 that said insurance was purchased by Mercantile but avers that said insurance was for the benefit of both plaintiff González and Mercantile, as the holder of the contract, as their interests might appear.

18. Mercantile admits the allegations of paragraph 18.

19. Mercantile admits that plaintiff Gonzalez paid all but 78 cents of the installment due February 28, 1972, but avers that said payment was not made until March 6, 1972.

20. Mercantile admits the allegations of paragraph 20.

21. Mercantile admits the allegations of paragraph 21.

22. Mercantile denies each and every allegation of paragraph 22. Mercantile avers that on or about May 24, 1972, it learned that the automobile purchased by Gonzalez, as alleged in paragraph 15 of the amended complaint, was then at City Wide Auto Repairs ("City Wide"), 3221 North Pulaski, Chicago, and was advised that it had been at City Wide since on or about April 17, 1972. Mercantile further avers that it obtained possession of said automobile from City Wide on June 7, 1972, upon its payment to City Wide for repairs to said automobile in the amount of \$542.68. Mercantile further avers that it was advised by plaintiff Gonzalez on May 30, 1972, that he could not pay the then overdue installments on said automobile (\$362.34 for the months of March, April and May), and the excess of the repair costs over the proceeds of the insurance required by the contract (said excess being \$220.00). Mercantile further avers that in any event, under the retail installment contract, a copy of which is attached to the amended complaint as Exhibit C, any unearned insurance premium received by the holder shall be credited to the final maturing installments of the contract, with exceptions not here pertinent.



*Answer to Amended Complaint*

23. Mercantile denies each and every allegation of paragraph 23. For further answer to paragraph 23, Mercantile incorporates herein by reference its answer to paragraph 22 above.

24-48. Mercantile makes no answer to these paragraphs, since these paragraphs do not refer to Mercantile.

49. Mercantile admits that Section 9-503 of the Uniform Commercial Code, Ill. Rev. Stats. ch. 26, Section 9-503, provides in part as alleged in said paragraph. Mercantile alleges that said automobile of plaintiff Gonzalez was repossessed pursuant to the retail installment contract, a copy of which is attached to the amended complaint as Exhibit C.

50. Mercantile admits that Section 9-504 of the Uniform Commercial Code, Ill. Rev. Stats. ch. 26, Section 9-504, provides in part as alleged in said paragraph. Mercantile avers that on June 7, 1972, it sent to plaintiff Gonzalez and to the co-signer of the above-mentioned retail installment contract, by certified mail, return receipt requested, a notice of sale to be held on June 19, 1972. Said notice of sale was in compliance with said Section 9-504. Mercantile further avers that on June 19, 1972, it sold said automobile to Chicago, Illinois Motor Sales, Inc. for the amount owing to Mercantile by Gonzalez on said retail installment contract.

51. Mercantile denies each and every allegation of paragraph 51. Mercantile avers that its actions in repossessing and selling said automobile were taken pursuant to and in accordance with its contract with plaintiff Gonzalez.

52. Mercantile denies each and every allegation of paragraph 52.

53. Mercantile denies each and every allegation of paragraph 53.

*Answer to Amended Complaint***FIRST AFFIRMATIVE DEFENSE TO COUNT I**

Plaintiff Gonzalez lacks standing to seek injunctive relief under Count I of the Amended Complaint because plaintiff's automobile was sold by Mercantile, pursuant to the retail installment contract with plaintiff, of which a copy is attached to the Amended Complaint as Exhibit C, prior to the filing of the Amended Complaint.

**SECOND AFFIRMATIVE DEFENSE TO COUNT I**

Count I of the Amended Complaint fails to state a claim on which relief can be granted.

WHEREFORE, Mercantile demands that Count I of the Amended Complaint be dismissed as to it, and that it have judgment for its costs of this action.

**COUNT II**

1-57. Mercantile makes no answer to the allegations of Count II, since Count II requests no relief against Mercantile other than declaratory relief also sought in Count I. As to the request for such declaratory relief, Mercantile realleges its answer to Count I.

• • •

**COUNT IV**

1. Mercantile admits that Count IV purports to seek recovery for damages allegedly sustained by plaintiff Gonzalez and to redress the alleged deprivation, allegedly under color of state law, of rights allegedly secured to him by the United States Constitution. Mercantile denies that plaintiff Gonzalez is entitled to any recovery under Count IV, for the reasons hereinafter set forth.

2. Mercantile admits that plaintiff Gonzalez purports to invoke the jurisdiction of this Court under Title 28 U.S.C. Section 1343(3) and (4), and Title 42 U.S.C. Section

*Answer to Amended Complaint*

1983. Mercantile denies that the matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000). Mercantile denies that plaintiff's purported cause of action is also properly within the ancillary jurisdiction of this Court.

3-17. Mercantile incorporates by reference and realleges its answer to paragraphs 13-23 and 49-52 of Count I.

18. Mercantile denies each and every allegation of paragraph 18.

19. Mercantile admits that plaintiff Gonzalez no longer has the use of the automobile described in paragraph 15 of Count I of the Amended Complaint. Mercantile denies each and every other allegation of paragraph 19 of Count IV.

WHEREFORE, Mercantile demands that Count IV of the Amended Complaint be dismissed and that it have judgment for its costs of this action.

• • •  
PAUL E. FLAHERTY  
DONALD J. PARKER  
ALBERT E. JENNER, JR.  
WILLIAM B. DAVENPORT  
PETER A. FLYNN

By \_\_\_\_\_

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Chicago, Illinois 60603  
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JENNER & BLOCK  
135 South LaSalle Street  
Chicago, Illinois 60603  
641-6060

*Attorneys for Defendant*

*Mercantile National Bank of Chicago*

(Certificate of Service omitted in printing)

*Motion*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**MOTION**

(Filed December 15, 1972)

NOW COMES the Defendant, John W. Lewis, Secretary of State, State of Illinois, by his attorney, William J. Scott, Attorney General of the State of Illinois, and moves this Court, pursuant to Rule 12(B) of the Federal Rules of Civil Procedure, for the entry of an Order dismissing the Amended Complaint, or in the alternative pursuant to Rule 56 of the Federal Rules of Civil Procedure, for the entry of an Order granting summary judgment in favor of this Defendant.

In support of this Motion, Defendant asserts the following:

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs have not alleged a substantial federal question founded directly on federal law.
3. Plaintiff, Hermogenes Mojica, lacks standing to seek either declaratory or injunctive relief under Count II of the Amended Complaint either on his own behalf or on behalf of others because the certificate of title to the 1970 Chevrolet formerly in the possession of this Plaintiff was transferred on April 3, 1972, subsequent to filing of the Complaint but prior to his Motion for Temporary Restraining Order and prior to the filing of the Amended Complaint. The certified copy of the application for Illi-

*Motion*

nois title in the name of Hermogenes Mojica and the application for Illinois title in the name of Automatic Employees Credit Union are attached hereto and incorporated herein by reference as Exhibit "A".

4. Plaintiff, Alberto Gonzalez, lacks standing to seek either declaratory or injunctive relief under Count II of the Amended Complaint either on his own behalf or on behalf of others because the certificate of title to the 1968 Pontiac formerly in the possession of this Plaintiff was transferred on June 16, 1972, prior to the filing of the Amended Complaint. The certified copy of the application for Illinois title in the name of Alfredo Gonzalez and the application for Illinois title in the name of Mercantile National Bank of Chicago are attached hereto and incorporated herein by reference as Exhibit "B".

• • •

7. Count II of the Amended Complaint, as demonstrated by Exhibit "A" through "C" inclusive and by the Affidavit of Fred Kogan referred to in paragraph 6 above, presents a moot question.

WHEREFORE, Defendant John W. Lewis, Secretary of State of the State of Illinois, prays that Count II of the Amended Complaint be dismissed and that he have judgment for his costs of this action.

Respectfully submitted,

/s/ William J. Scott

William J. Scott

Attorney General of Illinois

160 North LaSalle Street

Chicago, Illinois 60601

RICHARD C. ROBIN

Assistant Attorney General

Of Counsel

793-2549

## Application for Certificate of Title

## APPENDIX E

Certificate Number 80601

To all to whom these Presents Shall Come, Greeting:

I, JOHN W. LEWIS, Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached, is a true and correct copy of Application for Illinois title in the name of Alfredo Gonzalez, 822 W. Cuyler, Chicago, Illinois covering 1968 Pontiac, s/n 223678U141450 showing lien to Mercantile National Bank, 550 W. Jackson Blvd., Chicago, Illinois in the amount of \$1811.70, dated February 22, 1972, which title, PU0490138 was issued March 24, 1972. Application for repossession title in the name of Mercantile National Bank of Chicago, 222 South Riverside Plaza, Chicago, Illinois covering 1968 Pontiac, s/n 223678U141450, which title PU079227 was issued June 16, 1972.

the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I have set my hand and cause to be affixed the Great Seal of the State of Illinois  
Done at the City of Springfield this 11th  
day of December AD 1972



John W. Lewis

SECRETARY OF STATE

## Application for Certificate of Title

USE BLUE INK ONLY! FILL OUT ALL INFORMATION IN THE SPACES PROVIDED

TITLE NO. **J0490138** VEHICLE IDENTIFICATION NO. **223678W41450**

FEB-23-72 721100 TR-- 381 2.00

|   |   |                               |   |                           |  |
|---|---|-------------------------------|---|---------------------------|--|
| Make<br><b>PONTIAC</b>                                    | Year/Model<br><b>68</b>                                       | Body/Style<br><b>FIREHAWK</b> | No. Cyl.<br><b>8</b>                          | Horsepower<br><b>48.0</b> | CCM. Piston Displacement<br><b>NEW</b> |
| PRINT FULL NAME<br><b>GONZALEZ ALFARDO</b>                | Date of Purchase<br>Mo. <b>2</b> Day <b>22</b> Year <b>72</b> |                               | Purchase Price<br><b>NEW</b>                  |                           |  |
| Legal Address<br><b>822 W CUYLER</b>                      |   |                               | State of Last Registration<br><b>ILLINOIS</b> |                           |  |
| City or Town<br><b>CHICAGO</b>                            | ILL   | Zip Code<br><b>60606</b>      | County<br><b>COOK</b>                         |                           |  |
| WRITTEN SIGNATURE OF OWNER (S)<br><i>Alfredo Gonzalez</i> |   |                               | Social Security Number<br><b>508-767328</b>   |                           |  |
| Lien in favor of:<br><b>MERCANTILE NATIONAL BANK</b>      |   |                               | Mo. <b>2</b> Day <b>22</b> Year <b>72</b>     |                           |  |
| Street Address<br><b>550 W JACKSON BLVD</b>               |   |                               | Amount<br><b>\$1811.70</b>                    |                           |  |
| City<br><b>CHICAGO</b>                                    | State<br><b>IL</b>  | Zip Code<br><b>60606</b>      |   |                           |  |

APPLICANT MUST SIGN FULL NAME  
FOLLOW THE INSTRUCTIONS ON THE REVERSE SIDE

I (We) acquired this vehicle ☒ NEW ☐ USED ☐ on ☐ Month ☐ Day ☐ Year **72**

From **CHICAGO MOTOR SALES, INC.**

3505 WESTERN AVE.

From ☐ Street **CHICAGO, ILLINOIS** City ☐ State ☐

Whose address is **539-2660**

THIS VEHICLE OPERATED FOR HIRE ☐ NOT FOR HIRE ☒

- Have you operated this vehicle in Illinois? ☒
- Are you a licensed dealer? ☒ Dealer's License No. **1520**
- ☐ I am applying for title only ☒ I am applying for title and registration or transfer of title

SIGNATURE OF **CHICAGO MOTOR SALES, INC.** SELLING DEALER **CHICAGO MOTOR SALES, INC.**

Selling Dealer's License No. **1520** State **IL** Year **1972**

Subscribed and sworn to before me this **19** day of **Feb** 19 **72**

**SEAL NORTH** *Notary Public*

(Notary's Address)

CURRENT Title Number **H 225730** State **IL**

## APPLICATION FOR CERTIFICATE OF TITLE

CERTIFICATE OF TITLE WITH REGISTRATION OR TRANSFER ...\$2.00

CERTIFICATE OF TITLE ONLY ...\$5.00

JOHN W. LEWIS, Secretary of State



## Application for Certificate of Title

USE BLACK BALLPOINT PEN OR TYPEWRITER WITH DARK INK

TITLE NO. J1229227

VEHICLE IDENTIFICATION NO.

223678U141450

JUN 16-72 5921 201

523

|   |  |  |   |                           |                          |
|---|--|--|---|---------------------------|--------------------------|
| Make<br><b>Pontiac</b>  | Year Model<br><b>1968</b>                        | Body Style<br><b>Firebird</b>  | No. Cyl.<br><b>8</b>                          | Horsepower<br><b>48.0</b> | CCM, Piston Displacement |
| PRINT FULL NAME<br>Last First Middle<br><b>Mercantile National Bank of Chgo</b>                           | Date of Purchase<br>Mo. Day Yr.<br><b>6 7 72</b> | Purchased<br>NEW <input checked="" type="checkbox"/> USED <input type="checkbox"/> |   |                           |                          |
| Legal Address<br><b>222 South Riverside Plaza</b>   |  |  | State of Last Registration<br><b>Illinois</b> |                           |                          |
| City or Town<br><b>Chicago</b>  | ILL  | Zip Code<br><b>60606</b>   | County<br><b>Cook</b>                         |                           |                          |
| WRITTEN SIGNATURE OF OWNER (S)<br><i>Michael W. Halden</i><br><b>Mercantile National Bank of Chgo c/o</b> |  |  | Social Security Number                        |                           |                          |
| List in favor of:<br><b>none</b>  |  |  |   |                           |                          |
| Street Address<br><b>none</b>   |  |  |   |                           |                          |
| City<br><b>none</b>   |  |  |   |                           |                          |

APPLICANT MUST SIGN FULL NAME  
FOLLOW THE INSTRUCTIONS ON THE REVERSE SIDE

NEW ☐ USED ☒ on

Month Day Year  
**June 7 1972**

From **Alfredo Gonzalez**

Whose address is Street City State  
**822 W. Cuyler Chgo. ILL**

THIS VEHICLE OPERATED FOR HIRE ☐ NOT FOR HIRE ☒

1. Have you operated this vehicle in Illinois? **no**
2. Are you a licensed dealer? **no** Dealer's License No. **none**
3. ☐ I am applying for title Only. ☐ I am applying for title and registration or transfer of registration.

SIGNATURE OF SELLING DEALER **none**

Selling Dealer's License No. \_\_\_\_\_ State \_\_\_\_\_

Subscribed and sworn to before me this **17th** day of **June** 19**72**

SEAL **SPECIAL** (Notary Public)  
**JUN 16 1972** (Notary's Address)

SURRENDERED Title Number **10490138** State **Illinois**

## APPLICATION FOR CERTIFICATE OF TITLE

1. CERTIFICATE OF TITLE WITH REGISTRATION OR TRANSFER **7.00**
2. CERTIFICATE OF TITLE ONLY **3.00**

JOHN W. LEWIS, Secretary of State

ASSOCIATION SERVICES

RECEIVED  
JUN 16 1972  
TITLES  
JUN 1  
TITL



*Affidavit*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION  
[Caption Omitted in Printing]

**JOINT MEMORANDUM OF ALL CREDITOR  
DEFENDANTS IN OPPOSITION TO MOTION TO  
PROCEED AS A PLAINTIFFS' AND DEFENDANTS'  
CLASS ACTION IN COUNT I**

(Filed January 2, 1973)

• • •

**AFFIDAVIT**

STATE OF ILLINOIS    )  
                              ) SS.  
COUNTY OF COOK     )

Affiant Patrick Kalensky, being first duly sworn, on oath deposes and says:

1. Affiant is the President of Chicago Illinois Motor Sales, Inc., of 3939 North Western Avenue, Chicago, Illinois.

2. On August 15, 1972, Chicago Illinois Motor Sales, Inc. sold to Henry L. Davis, 2701 South Dearborn Street, Chicago, Illinois for \$1570.00, including tax, a 1968 Pontiac bearing identification number 223678U141450. That automobile was repossessed from Alfredo Gonzalez on June 7, 1972, by the Mercantile National Bank of Chicago, and was transferred to Chicago Illinois Motor Sales, Inc. by said Bank on June 19, 1972.

*/s/ Patrick Kalensky*

*Memorandum Opinion and Judgment Order*

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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Hermogenes Mojica, Alberto Gonzalez, James Barnett and  
Compton C. Banks, individually and on behalf of all others  
similarly situated,

*Plaintiffs,*

vs.

Automatic Employees Credit Union, Mercantile National  
Bank Of Chicago, Car Credit Corp., Overland Bond & In-  
vestment Corp. and Wood Acceptance Corp., individually  
and as representatives of all others similarly situated, and  
John W. Lewis, Secretary of State,

*Defendants.*

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NO. 72 C 686

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**MEMORANDUM OPINION AND JUDGMENT ORDER**

(Entered August 16, 1973)

Printed in Jurisdictional Statement as  
Appendix A at page 1a.

*Stipulation*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES**

(Rec'd October 4, 1973)

Printed in Jurisdictional Statement as  
Appendix B at page 12a.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Caption Omitted in Printing]

**STIPULATION**

(Filed December 28, 1973)

Now come a plaintiff, Alfredo Gonzalez, and a defendant, Mercantile National Bank, by and through their respective attorneys and stipulate that if plaintiff Gonzalez shall prevail on his damage claim against defendant Mercantile (presently Count IV of the Amended Com-

*Jurisdiction Postponed*

plaint) the amount of damages awarded shall not exceed \$750.00.

/s/ *James O. Lattuner*

*Attorney for plaintiff Gonzalez*

/s/ *William B. Davenport*

*Attorney for defendant Mercantile*

WILLIAM B. DAVENPORT

JENNER & BLOCK

One IBM Plaza

Chicago, Illinois 60611

PAUL E. FLAHERTY

GANN, McINTOSH, FLAHERTY & PARKER

135 S. LaSalle St.

Chicago, Illinois 60603

*Attorneys for defendant Mercantile*

JAMES O. LATTURNER

ALLEN R. KAMP

4564 N. Broadway

Chicago, Illinois 60640

769-1015

*Attorneys for Plaintiff Gonzalez*

SUPREME COURT OF THE UNITED STATES

No. 73-858

Alfredo Gonzalez, individually and on behalf  
of all others similarly situated,

Appellant,

v.

Automatic Employees Credit Union et al.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this cause having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

February 25, 1974